उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 681/2006 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA, J.

APPLICANTS

1. Gautam Prasad Satnami, S/o Sonu Ram Satnami, aged about 45 years, R/o Kosmadih, Police Station Masturi, Distt. Bilaspur (CG)
2. Jai Kumar Sharma, S/o Jagdish Prasad, aged about 32 years, resident of Bhawani Mandi, Ambedkar Nagar, Police Station Bhawani Mandi, Distt. Ghalawar,

Both are permanent resident of village Ameri, Bilaspur (CG)

VERSUS

NON-APPLICANT

State of Chhattisgargh, through P.S. Chakarbhata, District Bilaspur (CG)

20-12-2007

Shri Ashok Dixit, Counsel for the appellants.

Shri Sandeep Yadav, Dy. Govt. Advocate, for the State.

2. This criminal appeal is directed against the judgment of conviction and order of sentence dated 30th August, 2006 passed in Special Case No. 30/2005 whereby learned Special Court under Narcotic Drugs and Psychotropic Substances Act, 1985 (for short hereinafter referred to as the Act) Bilaspur has convicted the appellants under Section 21(b) of the Act and sentenced them to undergo R.I. for 4 years and fine of Rs. 20,000/-, in default of payment of fine, to further undergo, R.I. for 1 year.

3. Case of the prosecution, in brief, is that the Station House Officer S.K. Dubey (P.W. 3) received the secret information on 30th August, 2005 that the appellants are possessing the brown sugar for

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	the purposes of sale. After recording this information in the Rojnamcha Sanha as well as after preparing secret information memo of Ex. P-1, the information was forwarded to the City Superintendent of Police, Bilaspur and thereafter Inspector S.K. Dubey proceeded for investigation with other police personnel for village Ameri. The accused persons were apprised about the nature of information received by the police as also about their right to be searched by the gazetted officer or the Magistrate and after obtaining their consent, the premises was searched. Before affecting search, the raiding party also gave their personal search. On the personal search of Gautam Satnami, brown sugar in a plastic pouch was seized. Similarly, on the personal search of Jaikumar Sharma, another packet of brown sugar was found from the pocket of Jaikumar Sharma. On physical verification, the powder was identified as brown sugar. Weighment of the seized contraband was done and 82 gm of brown sugar was recovered from Jaikumar Sharma and 32 gm brown sugar was recovered from Gautam Satnami. The seized contraband was duly sealed and the same was seized vide seizure memo of Ex. P-25 and Ex. P-26. Thereafter offence was registered vide Ex. P-39. The information about search, recovery and seizure of the contraband was forwarded to the Magistrate and the Superintendent of Police. The seized contraband was sent for chemical examination with the memo of Ex. P-41 of Superintendent of Police to F.S.L. Raipur and as per report of Ex. P-43 of F.S.L. the presence of Diacitile Marfine (brown sugar) has been confirmed.	

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4. The prosecution to establish the charge has examined 6 witnesses; thereafter statements of accused persons were recorded in which they denied the evidence appearing against them in the prosecution case and pleaded innocence and false implication. However the trial Court after hearing the counsel for the respective parties has convicted and sentenced the appellants as mentioned in para 2 of the judgment.

5. Learned counsel for the appellants has assailed the impugned judgment on various grounds. Firstly, it was argued that as per entry in the Rojnamcha Sanha No. 1223 dated 30th August, 2005, time of receipt of the secret information is mentioned as 09.05 o'clock and it is also mentioned that after receiving the information, City Superintendent of Police was telephonically informed about the information whereas the secret information memo of Ex. P-1 mentions the time as 10.00 on 30-8-2005. Discrepancy and manipulation in the column of time in the notice under Section 50 of the Act of Ex. P-2 and Ex. P-3, consent memo of Ex. P-4 of appellant Gautam Satnami, personal search memo of Ex. P-6 was also pointed out. It was argued that crime number is mentioned in the notice to the accused persons of Ex. P-21 and Ex. P-22, memo of seal of Ex. P-23 and P-24, seizure memo of Ex. P-25 and P-26 though the crime was registered only after return to the police station vide Ex. P-39 at 20.15 hrs on 30th August, 2005. This clearly reflects that the whole proceedings were drawn in the police station. It was further pointed out that receipt of Ex. P-29 by which the contraband was handed

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over to Malkhana does not mention the description of seal by which the contraband was sealed, even the Malkhana register has not been produced and P.W. 2 Makhanlal, Malkhana In-charge has admitted that the copy of Malkhana Register has not been filed along with the charge sheet and Malkhana Register has also not been produced in the Court during trial. The memo of Superintendent of Police of Ex. P-41 by which the contraband was forwarded through Thomas Kujur to F.S.L., the date of despatch is shown as 21st September, 2005 whereas as per receipt of Ex. P-42, the article was received only on 23-9-2005 and further P.W. 4 Thomas Kujur has stated that he received the contraband from Malkhana only on 24-9-2005. The receipt of Ex. P-42 does not mention the description of seal by which the contraband was sealed and there is no evidence that original seal by which the contraband was seized was also forwarded to the F.S.L. along with the contraband. Reliance is placed on **State of Orissa –v- Sitansu Sekhar Kanungo** [1], and **Govind Ram –v- State of CG**[2].

6. On the other hand, learned counsel for the State has supported the impugned judgment.

7. The Special Court on the basis of statement of P.W. 3 S.K Dubey, Investigating Officer and documents of Ex. P-2 and Ex. P-3 has held that seizure was affected on the basis of personal search which was affected after obtaining consent of the appellants from their pocket. The whole investigation was done in the presence of City

[1] 2003(1) CCSC S129
[2] 2007(1)CGLJ 272

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Superintendent of Police. The presence of crime number in the seizure memo and other documents even before formally registering the offence has been brushed aside with the observation that the same were made subsequently and the explanation of the Investigating Officer in this regard has been accepted. On the basis of the evidence of P.W. 2 Makhanlal, P.W. 3 S.K. Dubey and P.W. 4 Thomas Kujur, it has been held that from their cross-examination, the defence was not able to bring any fact to demonstrate that the articles of A-1 and A-2 were not seized, thus conviction is based on the statements of P.W. 2 Makhanlal, P.W. 3 S.K. Dubey and P.W. 4 Thomas Kujur.

8. In the matter of **State of Orissa –v- Sitansu Sekhar Kanungo**[1], the Hon'ble Supreme Court considering that the reference of crime number is shown in the seizure memo and the Malkhana Register not produced during trial, upheld the order of acquittal recorded by the High Court with the observation that one of the vital limbs coupled with other factors has given a fatality to the prosecution case.

9. In the matter of **Govind Ram**[2] also, in the absence of any evidence in the shape of Malkhana Register that the packets containing brown sugar were in fact seized from the accused persons and were delivered at the Malkhana for safe custody and other surrounding circumstances, it has been held that the testimony of investigating officer and in-charge of Malkhan was totally unworthy of reliance that the seized articles were seized on the spot.

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	10. In the instant case, as already argued by the learned counsel for the appellants, the investigation conducted by the Investigating Officer is tainted right from its inception. There is material discrepancy in the time of receipt of secret information as reflected from the prosecution documents itself. Apart from this, there is a pattern of manipulation in the time column in various documents, the presence of crime number in the seizure memo which has been explained by the investigating officer that the same were added by him after the offence was registered vide Ex. P-39 also creates suspicion about authenticity of the above documents as the documents were subsequently corrected. The document of Ex. P-29 does not mention that the contraband was sealed by a particular seal. Even the document of Ex. P-42 being receipt given by the F.S.L. does not bear the impression of the seal and there is no evidence that the seal by which the contraband was sealed was in fact forwarded to the F.S.L. or specimen of seal was forwarded with the sample of the contraband for comparison. There is material discrepancy with regard to the date on which the contraband was forwarded through Thomas Kujur (P.W. 4). The memo of Ex. P-41 is dated 21st September, 2005 by which it is said that the contraband was forwarded to FSL whereas the contraband was received by the F.S.L. on 23-9-2005 as per receipt of Ex. P-42. P.W. 4 claims that he received the contraband from Malkhana on 24th September from Head Constable Makhanlal (P.W. 2) and gave it to F.S.L. In the absence of convincing evidence regarding despatch of contraband for	

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chemical analysis to F.S.L. and in view of the fact that the specimen seal was also not forwarded to Malkhana and there is no evidence as to in whose custody the contraband was placed between 21st September to 23rd September when the contraband was in fact received by F.S.L., it creates doubt whether the sample which was in fact seized from the appellants was forwarded in a sealed condition to the F.S.L. for analysis. In the background of the above fact, non-production of Malkhana Register during trial also adversely affects the version of P.W. 3 the Investigating Officer, P.W. 2 Malkhana Incharge Makhanlal and P.W. 4 Thomas Kukur that he obtained the contraband for submitting the same for chemical analysis to F.S.L. and in view of the above evidence, the trial Court was not justified in placing implicit reliance upon the testimony of the investigating officer and other witnesses and it ought to have extended benefit of doubt to the accused persons.

11. In the result, the appeal succeeds. The impugned judgment of conviction and order of sentence is set aside. The appellants are acquitted of all the charges. They be set at liberty forthwith if not required in any other case.

Sd/-
DHIRENDRA MISHRA
Judge